

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4762 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

D B MORE & OTHERS

Versus

DY.GEN. MANAGER (PERSONNEL), UNION BANK OF INDIA

Appearance:

MR PS CHARI for the Petitioners

M/s. Trivedi Gupta & Dave for the Respondent.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/08/96

ORAL JUDGEMENT

1. The counsel for the petitioners submit that the respondent no.2 is not the necessary party. The Officer higher in rank than the respondent no.2 is already party in this Special Civil Application, and as such, the name of respondent no.2 may be struck off. The office is directed to make necessary correction in the cause title of the writ petition.

2. Heard learned counsel for the parties. The

petitioners, who are working as permanent part time sweepers in the respondent bank, filed this Special Civil Application before this Court and the main grievance of their is that the order of the respondents for the recovery of the payment made to them according to the fitments given to them (three-fourth of the scale wage) after giving due weightage to their length of service is illegal. It is not in dispute that the petitioners were given fitment in the scale of the wage after giving due weightage to their length of service. It is the case of the respondent that the petitioners though were entitled for the fitment but only from the starting basic of the scale without taking into account the length of service. The counsel for the petitioner does not dispute that the weightage may not be given to the length of service while giving the benefit of fitment in the pay scale, but the recovery which has been ordered is illegal.

3. The learned counsel for the respondent, on the other hand, stated that the petitioner could not have been given the weightage of length of their services while given them the fitment, then the recovery is the consequential order, and as such, no interference should be made by this Court.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. So far as the recovery part is concerned, it is an admitted fact that the petitioners are working as part time sweepers and they have not committed any fraud or they were not in manner instrumental in taking the fitment after giving the weightage of the length of their service. The fitment has been done by the respondent and in case some error has been committed by the respondent then why these poor persons should be put to suffer this burden of returning of the amount received by them. The matter would have been different where the petitioner got it by playing some fraud or by concealing some fact or it may be a case of favouritism. It is a case where the petitioner has been given the benefits and they got it bonafidely. It is true that the respondent has all right to correct te error, but it will always be from the perspective date where the petitioners have bonafidely received the same. I do not find any justification in the action of the respondent to recover the amount which has been stated to be paid by error in excess of what the petitioners would have been otherwise entitled.

5. So far as the fitment of the petitioners in the pay scale is concerned without given any weightage to the length of their service, though held to be valid, but the

recovery of the amount which is ordered to be made cannot be allowed to stand.

6. In the result, this writ petition succeeds in part and the same is allowed. The respondent is hereby directed not to make recovery from the salary of the petitioner of the amount which has been paid in excess because of error made in passing the order of fitment. Rule stand disposed of accordingly. No costs.

zgs/-